RENDERED: SEPTEMBER 20, 1996; 10:00 A.M.

NOT TO BE PUBLISHED

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

No. 95-CA-002056-MR

CAROL B. HUBBARD - - - - - - - - - *Appellant*

v.

KENTUCKY EDUCATION PROFESSIONAL STANDARDS BOARD - - - - - - - - - *Appellee*

Appeal From Franklin Circuit Court
Honorable Roger Crittenden, Judge
Civil Action No. 95-CI-000401

OPINION—AFFIRMING AND REMANDING WITH DIRECTIONS

BEFORE: WILHOIT, Chief Judge; HUDDLESTON and SCHRODER, Judges.

HUDDLESTON, JUDGE. Carol B. Hubbard appeals from a Franklin Circuit Court judgment that affirmed a decision of the Kentucky Education Professional Standards Board (EPSB) that revoked her teaching certificate for two years based upon a finding of "immorality." The EPSB's action followed Hubbard's plea of guilty in the United States District Court for the District of Columbia to the misdemeanor charge of aiding and abetting the theft of govern-

ment property in violation of 18 United States Code (USC) §§ 641 and 2.[1]

---

[1]The information to which Hubbard pled charges that:

"1. From in or about November, 1990, to in or about May, 1992, the defendant, CAROL BROWN HUBBARD, was a candidate for election to the United States House of Representatives for the Fifth Congressional District of Kentucky.

"2. From in or about January, 1975, to in or about January, 1993, Carroll Hubbard, Jr. was a Member of the United States House of Representatives, representing the First Congressional District of Kentucky.

"3. The Carol Brown Hubbard for Congress Committee (CBHCC) was the principal campaign committee authorized to support the candidacy of CAROL BROWN HUBBARD for Congress.

"4. At various times beginning in or about October, 1991, and continuing through May, 1992, Carroll Hubbard, Jr. directed and ordered employees of his Congressional office, whose identities are known to the United States Attorney, to travel to various locations outside the First Congressional District, to assist the defendant, CAROL BROWN HUBBARD, in connection with her primary election campaign for the Fifth Congressional District, while those employees were receiving salaries from the House of Representatives.

"5. Carroll Hubbard, Jr. directed and ordered his employees who worked on the campaign of the defendant, CAROL BROWN HUBBARD, to state that they were on vacation at the time they were working on the CAROL BROWN HUBBARD campaign when in fact they were not on vacation.

"6. In order to prevent anyone from discovering that Congressional office employees of Carroll Hubbard, Jr., were working on the defendant's campaign while receiving a salary from the House of Representatives, Carroll Hubbard, Jr., suggested and directed that certain of the employees use aliases when working on the defendant's campaign. The defendant, CAROL

(footnote continued next page)

Hubbard was granted a Kentucky teaching certificate in 1966 and taught school in Kentucky until 1984 when she married United States Congressman Carroll Hubbard and moved to Washington, D.C. After unsuccessfully running for Congress herself in 1992, Hubbard resumed her teaching career In Kentucky in 1993.

Based upon allegations that Representative Hubbard's federal employees worked on his wife's campaign, both Representative Hubbard and Hubbard faced criminal charges for campaign violations in federal court in the District of Columbia. In April 1994, Hubbard entered a guilty plea to the misdemeanor charge of "aiding and abetting and indi-

---

(footnote continued from preceding page)

BROWN HUBBARD, was aware that the employees were using aliases and introduced certain of these employees by their aliases.

"7. At various times beginning in October, 1991 and continuing through May, 1992, employees of the Congressional office of Carroll Hubbard, Jr., as well as employees of the Subcommittee on General Oversight and Investigations of the Committee on Banking, Finance and Urban Affairs of the House of Representatives, during hours when those employees were receiving a salary for and were supposed to be performing official business of the House of Representatives engaged in campaign activities on behalf of the defendant, CAROL BROWN HUBBARD, with the knowledge of the defendant, including accompanying the defendant at various campaign events in the Fifth Congressional District of Kentucky, preparing written solicitations for contributions, arranging fundraising events, preparing letters acknowledging contributions, maintaining the records of the CBHCC, preparing reports to the Federal Election Commission on behalf of the CBHCC.

"8. Beginning in or about October, 1991, through in or about May, 1992, in the District of Columbia and elsewhere, the defendant, CAROL BROWN HUBBARD, willfully and knowingly aided and abetted Carroll Hubbard, Jr., in stealing and converting to his own use and to the use of the defendant, property of the United States, that is, the value of the salaries paid by the United States House of Representatives to its employees."

rectly causing the conversion and theft of . . . the services of employees of the United States House of Representatives assigned to the offices of [her husband]." Since Hubbard was teaching in Hardin County at the time of her guilty plea, the Superintendent of the Hardin County School System notified the EPSB of the conviction.

On March 21, 1995, the EPSB revoked Hubbard's certificate until July 1, 1997. The following day, Hubbard sought injunctive relief and judicial review of the revocation order in Franklin Circuit Court. She also asserted a 42 U.S.C. § 1983 claim. The circuit court initially granted injunctive relief, but ultimately affirmed the revocation order and dismissed the section 1983 claim. Hubbard appealed to this Court and sought Ky. R. Civ. Proc. (CR) 65.08(7) emergency relief.[2] In September 1995, another panel of this Court granted Hubbard's motion for a stay pending appeal. Subsequently, the Supreme Court of Kentucky denied the EPSB's motion to lift the stay.

Hubbard contends on appeal, as she did below, that the use of the term "immorality," without further definition, renders Ky. Rev. Stat. (KRS) 161.120(l)(a) unconstitutionally vague.[3] KRS 161.120(l)(a) provides:

> *Any certificate* issued under KRS 161.010 to 161.100, or any certificate or license issued under any previous law to superintendents, principals, teachers,

---

[2]Ky. R. Civ. Proc. (CR) 65.08(7) provides: "If a movant will suffer irreparable injury before the Court of Appeals may hear the motion, the movant may request emergency relief from a member of the Court which may be granted ex parte if necessary . . . ."

[3]CR 24.03, in relevant part, explains that "[w]hen the constitutionality of an act of the General Assembly affecting the public interest is drawn in question *in any action to which the State or* an officer, *agency,* or employee *thereof is not a party,* the movant shall serve notice of the motion upon the Attorney General." (Emphasis supplied.) The Education Professional Standards Board (EPSB) Is an agency of the state.

> supervisors, directors of pupil personnel, or other administrative, supervisory, or instructional employees *may be revoked by the Education Professional Standards Board for immorality*, misconduct in office, incompetency, violation of the school laws of the state or administrative regulations adopted by the State Board for Elementary and Secondary Education, willful neglect of duty, conviction of a misdemeanor offense under KRS Chapter 510 involving a student, or a felony offense under KRS Chapter 510, 530.064, or 531.310, or being found by the Education Professional Standards Board to have had sexual contact as defined in KRS 510.010(7) with a student, or upon the determination that a certificate applicant presented or declared false information toward obtaining the issuance or renewal of any type of teacher certification. (Emphasis supplied.)

An enactment is "void for vagueness" if "[people] of common intelligence[4] must . . . guess at its meaning." *State Bd. of Elementary and Secondary Educ. v. Howard*, Ky., 834 S.W.2d 657, 662 (1992). *See also Fowler v. Board of Educ. of Lincoln County*, Ky., 819 F.2d 657, 664 (6th Cir. 1987); *Thompson v. Southwest Sch. Dist.*, 483 F.Supp. 1170, 1178 (W.D. Mo. 1980) (stating that "it has become a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined"); and Romualdo P. Eclavea, Annotation, *Supreme Court's Application of Vagueness Doctrine to Noncriminal Statutes or Ordinances*, 40 L.Ed.2d 823 (1974). In *Cornette v. Commonwealth*, Ky.App., 899 S.W.2d 502, 508 (1995), this Court explained that:

> A statute is impermissibly vague when "a person disposed to obey the law could [not] determine with reasonable certainty from the language used whether contemplated conduct would amount to a violation." (Citations omitted.)

---

[4]Ky. Rev. Stat. (KRS) 446.080(4) provides that "[a]ll words and phrases shall be construed according to the common and approved usage of language . . . ."

See also Thompson, 483 F.Supp. at 1179 (saying that "the standard test for determining whether the terms of a statute are sufficiently precise to comply with due process concepts is whether the statute gives the person of ordinary intelligence a reasonable opportunity to know what is prohibited so that he may act accordingly"). Yet, "not every statute which a reviewing court believes could have been drafted with greater precision is unconstitutionally vague." *Thompson*, 483 F.Supp. at 1178. In fact, "[t]here is a strong presumption of constitutionality which is afforded any enactment of the General Assembly." *Kraus v. Kentucky State Senate*, Ky., 872 S.W.2d 433, 438 (1994).

Since KRS Chapter 161 does not define "immorality," Hubbard argues that KRS 161.120 (1) (a) fails to provide fair warning that her guilty plea would support a finding of "immorality." The term "immoral" is commonly understood to mean conduct that is "[c]ontrary to accepted moral principles." *Webster's II New Riverside University Dictionary* 612 (1984). *See also Black's Law Dictionary* 751 (6th ed. 1990). The problem is that "[i]mmorality means different things to different people . . . ." *Burton v. Cascade Sch. Dist. Union High Sch. No. 5*, 353 F.Supp. 254, 255 (D. Or. 1973). "In the opinion of many people laziness, gluttony, vanity, selfishness, avarice, and cowardice constitute immoral conduct." *Kenai Peninsula Borough Bd. of Educ. v. Brown*, 691 P.2d 1034, 1040 (Alaska 1984), quoting *Morrison v.* State *Bd. of Educ.*, 461 P.2d 375, 382 (Cal. 1969).

Although we are not prepared to say that the EPSB is free to define all acts offensive to the subjective moral principles of its members as "immoral," we are unable to say that KRS 161.120(1)(a) is unconstitutionally vague as it applies to Hubbard. Hubbard pled guilty to a theft-related misdemeanor. We are unaware of any civilized society in which theft is consistent with "accepted moral principles." Even though "immorality" is a vague term, Hubbard must have known that "theft" is "contrary to accepted moral principles" when she pled guilty to such a charge. Accordingly, KRS 161.120(l)(a) is not unconstitutional as applied to Hubbard.

Alternatively, Hubbard argues that revocation of her teaching certificate was improper because there is no nexus between her conviction and her performance as a teacher. Discussing a different, but related statute, KRS 161.790, in *Board of Educ. of Hopkins County v. Wood*, Ky., 717 S.W.2d 837, 840 (1986), the Supreme Court said that "the [allegedly immoral] conduct, when it occurs in a context other than professional competency in the classroom[,] should have some nexus to the teacher's occupation . . . ." Providing for the termination of a teacher's contract for "[i]mmoral character or conduct unbecoming a teacher," KRS 161.790(1)(b) is substantially similar to KRS 161.120(1)(a) which provides for the revocation of teaching certificates. The similarity of KRS 161.120(1)(a) and KRS 161.790(1)(b) leads us to an interpretation of KRS 161. 120(1)(a) requiring the alleged immorality to "have some nexus to the teacher's occupation." *Id.* at 840.

Since "[t]he school teacher has traditionally been regarded as a moral example for the students," the required nexus is satisfied if the teacher's conduct is of the type that tends to make a "harmful impression . . . on the students." *Board of Educ. of Laurel County v. McCollum*, Ky., 721 S.W.2d 703, 705 (1986). Speaking to the nexus issue in this case, the circuit court said:

> The facts in Hubbard's case show she was convicted of aiding in the theft of government property. At a time when Hubbard should have been an example of leadership, responsibility, and honesty, she chose to take government property for her own benefit. Her actions are immoral and a poor example for her students. Thus, the Board had substantial evidence for its finding that Hubbard's actions constitute immorality under KRS 161.120(1)(a).

A nexus has been identified and we, like the circuit court, will not substitute our judgment for that of the EPSB. *See Kentucky Bd. of Nursing* v. *Ward*, Ky.App., 890 S.W.2d 641, 642 (1994) (emphasizing that an appellate court is not to "substitute its judgment as to the credibility of the wit-

nesses and/or the weight of the evidence concerning questions of fact" in administrative matters).

Hubbard's contention that the circuit court erred in dismissing her 42 U.S.C. § 1983 claim is also without merit. The statute provides that:

> Every *person* who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . . (Emphasis supplied.)

While it is true that Hubbard has a property interest in her teaching certificate, the EPSB is not a "person" for purposes of 42 U.S.C. § 1983. *See Will v. Michigan Dept. of State Police,* 491 U.S. 58, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989) (holding that "[s]tates and state officials acting officially" are not "persons" subject to liability under 42 U.S.C. § 1983). Since the EPSB is an agency of the state, the circuit court correctly dismissed Hubbard's 42 U.S.C. § 1983 claim.

Hubbard also contends that the circuit court erred in entering a protective order prohibiting her from conducting further discovery. We disagree. Hubbard sought to discover "all records, memoranda, correspondence and documents received and/or reviewed by [the Chair of the EPSB] before voting on [the] case at the March 21, 1995 [EPSB] meeting." As a general rule, the circuit "court is not free to consider new or additional evidence . . . ." *Kentucky Bd. of Nursing,* 890 S.W.2d at 642. *See also American Beauty Homes Corp. v. Louisville and Jefferson County Planning and Zoning Comm'n,* Ky., 379 S.W.2d 450, 457 (1964) (indicating that new or additional evidence may be admissible only "to determine what state of facts the [agency] acted on, or possibly to establish the violation of some legal right with respect to a matter not in issue in proceedings before the [agency]"). By asserting the 42 U.S.C. §

1983 claim, Hubbard attempted to raise an issue in the circuit court that had not been considered by the EPSB. If Hubbard's 42 U.S.C. § 1983 claim had been a viable one, additional discovery *might* have been appropriate under *American Beauty Homes*, 379 S.W.2d at 457. Since the 42 U.S.C. § 1983 claim was properly dismissed, however, it was not. Finding no other justification for consideration of "new or additional evidence," the circuit court was correct in prohibiting further discovery.

The judgment revoking Hubbard's teaching certificate until July 1, 1997, is affirmed.[5]

WILHOIT, JUDGE, CONCURS.

SCHRODER, JUDGE, DISSENTS WITHOUT SEPARATE OPINION.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT FOR APPELLANT:
Kyle T. Hubbard
Louisville, Kentucky

BRIEF AND ORAL ARGUMENT FOR APPELLEE:
Robert E. Stopher
BOEHL, STOPHER & GRAVES
Louisville, Kentucky

---

[5]Although enforcement of the EPSB revocation has been suspended during the pendency of this appeal, the EPSB has not cross-appealed seeking extension of the suspension period. We are thus without authority to extend the revocation period beyond July 1, 1997, although invited to do so by the EPSB in its brief. The action by the EPSB appears to have been remedial in nature, rather than punitive. *Cf. United States v. Halper*, 490 U.S. 435, 109 S. Ct. 1892, 104 L. Ed. 2d 487 (1989). It apparently was intended to remedy the adverse effect which the appellant's conviction might have on students by virtue of her being a role model for them. The Board must have believed that this adverse effect would disappear after two years when the conviction was safely "old news" and out of current public discourse.

SUPREME COURT OF KENTUCKY

96-SC-1062-D
(95-CA-2056-MR)

CAROL B. HUBBARD - - - - - - - - *Movant*

v.

KENTUCKY EDUCATION PROFESSIONAL STANDARDS BOARD - - - - - - - *Respondent*

Franklin Circuit Court
95-CI-401

ORDER DENYING DISCRETIONARY REVIEW

The motion for review of the decision of the Court of Appeals is denied.

Stephens, C.J., and Cooper, Lambert and Wintersheimer, JJ., all concur.

ENTERED January 22, 1997.

/s/ Robert F. Stephens
Robert F. Stephens
Chief Justice

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION I

Civil Action No. 95-CI-00401

CAROL B. HUBBARD - - - - - - - - *Plaintiff*

v.

KENTUCKY EDUCATION PROFESSIONAL STANDARDS BOARD - - - - - - - - *Defendant*

JUDGMENT—Entered July 25, 1995

This matter comes before the Court on the appeal of Carol B. Hubbard from a decision of the Education Professional Standards Board ("the Board") revoking her certificate for two years.

In May 1994, Carol Hubbard entered a guilty plea to a federal misdemeanor charge that arose from her conduct during a 1992 congressional race. During her campaign, Hubbard used employees from the office of her husband, U.S. Rep. Carroll Hubbard, to work on her campaign. These employees were on the government payroll when they worked for her. Accordingly, Hubbard pled guilty to one misdemeanor count of aiding and abetting the theft of government property.

Because Hubbard is a fifth grade teacher, she is subject to KRS 161.120(l)(a) which says the Board may revoke a teacher's certificate for immorality, among other things. The Board charged Hubbard with immorality based on her guilty plea. After a hearing on the merits, a hearing officer determined (1) Hubbard had engaged in immoral con-

duct by violating federal law, and (2) a nexus existed between the immoral conduct and her teaching certificate because Hubbard serves as a moral example for her students. The hearing officer therefore recommended the Board revoke Hubbard's certificate for one year. The full board upheld the hearing officer's finding of immorality but increased the revocation to two years instead of one. Hubbard now appeals that decision.

JUDGMENT

First, Hubbard argues the term "immorality" in KRS 161.120(1)(a) is unconstitutionally vague because it fails to give notice of what conduct is prohibited and allows erratic enforcement. In *Colten v. Kentucky*, 407 U.S. 104, 110 (1972), the Supreme Court said:

> The root of the vagueness doctrine is a rough idea of fairness. It is not a principle designed to convert into a constitutional dilemma the practical difficulties in drawing ... statutes both general enough to take into account a variety of human conduct and sufficiently specific to provide fair warning that certain kinds of conduct are prohibited.

Accordingly, due process is violated only when a "'statute . . . either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.'" *Fowler v. Board of Educ. of Lincoln County*, 819 F.2d 657, 664 (6th Cir. 1987) (quoting *Connally v. General Construction* Co., 269 U.S. 385, 391 (1926)). Whether the statute is vague will depend on how the statute is applied. *Maynard* v. *Cartwright*, 486 U.S. 356, 361 (1988). Therefore, this Court must decide if KRS 161.120(1)(a) is vague as applied to Hubbard.

Hubbard's immorality is aiding in the theft of government property. Her conduct was egregious enough for a federal misdemeanor conviction. Courts are hesitant to call a statute vague if the employee's conduct falls within a statutory prohibition. *Fowler*, 819 F.2d at 665. The reasoning behind this hesitancy is that an employee is put on

notice by the statute that his conduct is either illegal or inappropriate. Hubbard had adequate notice that her conduct constituted immorality because a criminal statute was in effect prohibiting her conduct. Indeed, theft has traditionally been regarded as a crime of moral turpitude. Hence, KRS 161.120(1)(a) is not vague as applied to Hubbard.

Second, Hubbard argues her misdemeanor conviction does not have a nexus to her fitness to teach as required by *Board of Educ. of Hopkins County v. Wood*, Ky., 717 S.W.2d 837 (1986). Although the issue in *Wood* was the application of a statute requiring written records to support termination of a teacher, the Court provided some guidance for the use of immoral conduct to discharge a teacher. For instance, the Court said the conduct should have some nexus to the teacher's occupation if the alleged immoral conduct occurs outside the classroom. *Id.*

The Court's reference to a nexus requirement may not be the holding of *Wood*, but it is relevant to a discussion of what kind of immoral conduct subjects a teacher to revocation of a certificate. As the Court noted, the legislature did not intend to subject a teacher to discipline for private shortcomings that have no relation to the teacher's involvement or example to the school community. *Id.* But the legislature did intend to hold teachers to a standard of personal conduct which does not permit the commission of immoral or criminal acts because of the harmful impression made on the students. *Wood*, 717 S.W.2d at 839. Teachers are held to a high standard because they have traditionally been regarded as moral examples for their students. *Id.* Accordingly, an immoral act committed outside the classroom may have a nexus to the teacher's occupation if it sets a poor moral example. The conduct does not necessarily have to be related to in-class performance.

To determine what immoral acts subject a teacher to discipline, the Board must look at the facts and circumstances of each case. While conviction of a crime will not automatically lead to revocation of a certificate, it is one

factor to be considered. The facts in Hubbard's case show she was convicted of aiding in the theft of government property. At a time when Hubbard should have been an example of leadership, responsibility, and honesty, she chose to take government property for her own benefit. Her actions are immoral and a poor example for her students. Thus, the Board had substantial evidence for its finding that Hubbard's actions constitute immorality under KRS 161.120(1)(a).

THEREFORE, the decision of the Education Professional Standards Board is AFFIRMED and Hubbard's appeal is DISMISSED.

So ordered this 25th day of July, 1995. There being no just cause for delay, this is a final and appealable JUDGMENT.

/s/ Roger L. Crittenden
Roger L. Crittenden
Judge, Franklin Circuit Court

DISTRIBUTION:
Robert E. Stopher
Palmer G. Vance, II
BOEHL, STOPHER & GRAVES
Suite 2300
400 W. Market Street
Louisville, Kentucky 40202-3346

Kyle T. Hubbard
2100 National City Tower
101 South Fifth Street
Louisville, Kentucky 40202

COMMONWEALTH OF KENTUCKY
EDUCATION PROFESSIONAL STANDARDS BOARD

IN RE: CAROL BROWN HUBBARD
CERTIFICATE NUMBER: 402-48-4266

FINAL ORDER

This matter having come before the Education Professional Standards Board on March 21, 1995, and the Board having reviewed the record and being otherwise sufficiently advised, hereby orders:

The Education Professional Standards Board adopts the "Findings of Fact and Conclusions of Law" of the Hearing Officer with the following modifications:

1) Delete paragraph five (5) of the Conclusions of Law;

2) Finds that the Respondent's actions constitute immorality under KRS 161.120 and not misconduct in office, and;

3) Amends paragraph seven (7) of the Conclusions of Law to read as follows: "The Education Professional Standards Board is justified in revoking the teaching certificate of the Respondent, Carol Brown Hubbard, for immorality pursuant to KRS 161.120.

Therefore, the Education Professional Standards Board REVOKES the Respondent's Certificate (402-48-4266) until July 1, 1997.

So ordered on this the 21st day of March, 1995.

/s/ Daniel Greene
Daniel Greene, Chair
Education Professional
Standards Board

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

No. 95-CA-2056-MR

CAROL B. HUBBARD - - - - - - - - *Appellant*

v.

KENTUCKY EDUCATION PROFESSIONAL STANDARDS BOARD - - - - - - - - *Appellee*

Appeal From Franklin Circuit Court
Honorable Roger Crittenden, Judge
Action No. 95-CI-000401

ORDER DENYING PETITION FOR REHEARING

BEFORE: WILHOIT, CHIEF JUDGE, HUDDLESTON AND SCHRODER, JUDGES.

The Court having considered the Petition for Rehearing and being sufficiently advised, it is ORDERED that the same is hereby DENIED.

/s/ Wil Schroder
Wil Schroder
Judge, Court of Appeals

Entered: November 15, 1996

COMMONWEALTH OF KENTUCKY
EDUCATION PROFESSIONAL STANDARDS BOARD

IN RE THE TEACHING CERTIFICATE OF:
RESPONDENT: HUBBARD, CAROL BROWN
CERTIFICATE NUMBER: 402-48-4266

STIPULATION

Comes the Respondent, Carol Brown Hubbard, and the Education Professional Standards Board, by counsel, and hereby stipulate as follows:

1. Carol Brown Hubbard has properly and capably performed and fulfilled her duties as a teacher throughout her career at the following schools:

(a)	Carlisle Elementary School Nicholas County School System Carlisle, Kentucky	1st grade 1966-1967
(b)	Richmond Elementary School Richmond City School System Richmond, Kentucky	5th grade 1967-1968
(c)	Pulaski Elementary School Pulaski County School System Somerset, Kentucky	1st grade 1968-1970
(d)	Hopkins Elementary School Somerset City School System Somerset, Kentucky	4th and 1st grades 1970-1984
(e)	Radcliff Middle School Hardin County School System Radcliff, Kentucky	5th grade 1993-1994
(f)	Brown Street Education Center Hardin County School System Vine Grove, Kentucky	 1994-1995

2. The parties stipulate the Transcript of Sentencing before the Honorable Louis F. Oberdorfer, United States District Judge, dated June 30, 1994, wherein Judge

Oberdorfer made the following comments:

(a) ". . . I am satisfied that you're a victim and not a perpetrator and I'm satisfied that you're thoroughly remorseful . . ." (p. 23);

(b) ". . . you obviously led a productive and a very useful life as a teacher and I hope that despite your present difficulties you can resume and the authorities in Kentucky will permit you to resume your teaching career, wiser for this experience." (p. 24);

(c) ". . . having said all that I wish for you an opportunity to return to your career as a teacher and hopefully spend an useful life." (p. 25).

3. The parties stipulate the Guilty Plea Agreement dated March 28, 1994.

4. The parties stipulate that certain letters will be introduced by the Respondent, Carol Brown Hubbard, and they may be admitted as evidence as the testimony of the writers of those letters so the school principals would not have to travel to Frankfort to participate in this hearing.

Education Professional Standards Board
By: /s/ Marcia Ford Seiler
Marcia Ford Seiler, Counsel
119 Capital Plaza Tower
500 Mero Street
Frankfort, Kentucky 40601

Carol Brown Hubbard
By: /s/ Kyle T. Hubbard
Kyle T. Hubbard, Counsel
2100 National City Tower
101 South Fifth Street
Louisville, Kentucky 40202

COMMONWEALTH OF KENTUCKY
EDUCATION PROFESSIONAL STANDARDS BOARD

IN RE THE TEACHING CERTIFICATE OF:
RESPONDENT: HUBBARD, CAROL BROWN
CERTIFICATE NUMBER: 402-48-4266

TRANSCRIPT OF HEARING, EXCERPT

The following is a transcript of the hearing held in the above-styled case on December 13, 1994, beginning at the hour of 10:00 a.m., at the Capital Plaza Tower, G-1, Frankfort, Franklin County, Kentucky, before Hon. Mary James Young, Hearing Officer.

* * * * *

4

* * * * *

HEARING OFFICER: Okay — very fine, then — let's begin with the first witness for the board.

Ms. Seiler: Okay — my first witness and only witness is Terri Eversole. And, I ask that she be sworn in.

The witness, Terri Eversole, being first duly sworn, testifies as follows:

QUESTIONING BY MS. SEILER:

Q1. Please state your full name for the record.

A. Terri Lynn Eversole.

Q2. And, Terri Eversole, who are you employed by?

A. The Kentucky Department of Education.

Q3. And, what is your position?

5

A. I am the clerk for the Education and Professional Standards Board.

Q4. And, as clerk, is it your responsibility to maintain the official file in the Education and Professional Standards Board's revocation cases?

A. Yes, it is.

Q5. And, in that position, did you maintain the file of Carol Brown Hubbard, certificate number 402-48-4266?

A. Yes.

Q6. Okay — please turn to Exhibit — Board Exhibit 1. Is this a document that is maintained in your files?

A. Yes, it is.

Q7. And, what is this document?

A. This is the teaching certificate that the Kentucky Department of Education issued for Ms. Hubbard. It is proof that she is eligible to teach in the elementary grades one through eight, and, kindergarten.

Ms. Seiler: I will move for entry of all of the exhibits at the end.

6

Q8. Exhibit 2 — is that a document maintained by your office?

A. Yes, it is.

Q9. Okay — and, what is that document?

A. It is the initial complaint sent by the superintendent of Hardin County, with a guilty plea (sic) attached, and, we have attached that to the statement of charges.

Q10. Okay — and, Exhibit 3 — what is this document?

A. This is an order and a cover letter, from the Education and Professional Standards Board, stating that there is probable cause to conduct a hearing.

Q11. And, Exhibit 4 — is that maintained by you?

A. Yes, it is.

Q12. And, what is Exhibit 4?

A. It is a statement of charges of facts of the crime committed by Ms. Hubbard, and, sets out her sentencing.

The guilty plea is attached as Exhibit A.

Q13. Please remember documents 5 through 13 and tell me whether these are files maintained by your office, and, how you came into possession of these documents.

7

A. Okay — all of these are maintained in the official files in my office. Exhibit 5 — Barbara Locker (sic) has requested pleadings from this case. This is the cover letter from the United States Department of Justice.

Q14. And, just briefly, go through each one, and, tell what number document — what exhibit number it is, and, what the document is.

A. Okay — Exhibit 6 is the charges against Ms. Hubbard. Exhibit 7 is the guilty plea to the charges. Exhibit 8 is the transcript of the guilty plea. Exhibit 9 is the government sentencing memorandum. Exhibit 10 is Ms. Hubbard's sentencing memorandum. Exhibit 11 is the government's response to Ms. Hubbard's sentencing memorandum. Exhibit 12 is Ms. Hubbard's response to the government's sentencing memorandum.

Q15. Okay.

A. And, Exhibit 13 are newspaper articles, concerning the case, from local newspapers.

Q16. Okay — the final exhibit, that should be in everybody's packet, that I didn't number, is a small Code of Ethics. And, is this the document that is prepared by the Education

8

and Professional Standards Board?

A. Yes, it is.

Q17. Okay — and, are these — is this document maintained in your office?

A. Yes, it is.

Ms. Seiler: If there is no objection, I would move for entry of Exhibits 1 through 14.

Mr. Hubbard: I have no objection.

HEARING OFFICER: With no objection, they will be entered as Exhibits 1 through 14.

Ms. Seiler: Hearing Officer, that is basically the case — the factual case of the board. At this point, I would close the proof of the board, and reserve any right for any rebuttal witnesses to any proof put on by Mr. Hubbard, although, I believe we have already reviewed documents, and I have stipulated to what he is going to put in, and, then, reserve the right to

9

make oral argument and discuss the possibility of a written position paper, at some time, if it's acceptable. But, at that time, I would — at this time, I would close my proof.

BY THE COURT: Okay — the proof for the board is closed, and, this is Mr. Hubbard's case then.

* * * * *